

## REMARKS/ARGUMENTS

Upon acceptance and entry of this Amendment After Final Rejection, claim 4 will be the only claim under active consideration in the subject patent application. Applicant notes that this amendment has been filed within two (2) months of the mailing date of the Final Action. Applicant requests entry of this Amendment After Final Rejection in order to place the case in better form for allowance or appeal.

In the Final Official Action of March 24, 2006, the Examiner:

(1) entered Applicants' request for continued examination filed January 24, 2006, and withdrew the finality of the previous Office Action under 37 C.F.R. § 1.114;

(2) reviewed and accepted Applicants' terminal disclaimer filed on January 24, 2006, disclaiming the terminal portion of any patent granted on this application extending beyond the expiration date of U.S. Patent No. 6,802,362;

(3) rejected claims 4 - 8 and 19 - 21 under 35 U.S.C. §103(a) in view of the proposed combination of Japan Patent No. 08-306836, issued to Ogawara, with Przyborowski, U.S. Patent No. 2,046,791;

(4) rejected claims 6 – 7 as being considered method limitations in an apparatus claim; and

(5) considered Applicants' arguments filed January 24, 2006 and found them unpersuasive.

With regard to Items 1 and 2, no comment appears necessary.

With regard to Item 3, Applicants have cancelled claims 8, and 19 – 21, thus rendering moot the Examiner's rejection of these claims.

With regard to Items 3 and 4, Applicants are confused as to why the Examiner has rejected claims 5, 6, and 7 in this Final Office Action. These claims were not under active consideration in the pending continuing examination as submitted, having been cancelled by Applicants in the preliminary amendment filed on January 24, 2006. In order to place the pending application in the best possible form for allowance or appeal, Applicants request a clarification on the from the Examiner as to the status of these claims and the reason for their inclusion by the Examiner in the Final Office Action.

With regard to Item 5, Applicants submit that the Examiner has not provided any support for the statements, rejecting Applicants' argument, at page 4 of the Action, that:

Solder does not require a gap as suggested by applicant, rather solder wicks via capillary action in the closest tolerances. Even in applicants' invention, though a compression fit exists, solder will wick there through if applied, especially in the presence of slots in the plate fin.

Patent Office Rule 104(c)(2) (37 C.F.R. § 1.104(c)(2)) requires that "in rejecting claims for . . . obviousness, the examiner must cite the best references at his or her command" (emphasis added). In making the statement, quoted above, about the qualities or properties of solder, and specifically its lack of need for a gap or its ability to wick in the "closest tolerances", the Examiner failed to cite any prior art. Accordingly, it appears that the Examiner is relying upon facts within the Examiner's knowledge, as provided by 37 C.F.R. § 1.104(c)(3).

As set forth above, Applicants therefore request an Examiner's affidavit, pursuant to 37 C.F.R. § 1.104(d)(2) containing information in support of the Examiner's statements, specifically:

(a) all facts within the personal knowledge of the Examiner at the time of the invention regarding soldering, how solder flows, its qualities, properties and mechanisms for bonding, and its ability to wick via capillary action within "the closest tolerances" as set forth in the rejection of Claim 4;

(b) all tests or experiments which the Examiner has directly witnessed or participated in at the time of the invention involving soldering, how solder flows, its qualities, properties and mechanisms for bonding, and its ability to wick via capillary action within "the closest tolerances" as set forth in the rejection of Claim 4;

(c) all data within the possession, custody or control of the Examiner relating to the tests or experiments identified in response to item (b) above; and

(d) all facts within the personal knowledge of the Examiner which define the level of skill, training, education, and work experience of "one practicing in the art" in the art of soldering and heat pipe manufacturing and engineering.

Without cited prior art or Examiner affidavit testimony, supporting the conclusory contentions stated in the Office Action regarding the rejection of Claim 4, Applicants are deprived of their right to know the relevant factual bases supporting this obviousness rejection. As expressly provided in 37 C.F.R. § 1.104(d)(2), any affidavit submitted by the Examiner "shall be subject to contradiction or explanation by the affidavits of the applicant and other persons."

If a telephone conference would be of assistance in advancing prosecution of the above-identified application, Applicants' undersigned Attorney invites the Examiner to telephone him at **215-979-1255**.

Respectfully submitted,

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